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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PLANET ONE PRODUCTS, INC.  
*Plaintiff,*

v.

WINE CELLAR PRO LLC,  
And  
ERIK KUEHNE  
*Defendants*

CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF**

JURY TRIAL DEMANDED

Planet One Products, Inc. ("Plaintiff") alleges claims against Defendants Wine Cellar Pro LLC and Erik Kuehne ("Defendants") for trademark infringement under federal law, false designation of origin, injury to business reputation and/or trademarks, common law unfair competition, and seeks a permanent injunction, damages, and attorney's fees and costs, and such other relief as the Court deems just and proper.

PARTIES

1. Planet One Products, Inc. is a corporation organized under the laws of the State of California and maintains its principal office at 1445 N. McDowell Boulevard, Petaluma, California 94954.



1 time this action commenced. Defendants' contacts are substantial enough with the State of  
2 California to subject Defendants to personal jurisdiction. Further, each Defendant committed  
3 acts within this judicial district that give rise to this action.  
4

5  
6 FACTS COMMON TO ALL CLAIMS

7 7. Plaintiff has used the CELLAR PRO trademark since approximately 2008, the  
8 trademark being displayed as "CellarPro" with the two words adjacent but highlighting the two  
9 words by capitalization of the second word.  
10

11 8. Plaintiff is the lawful owner of U.S. Registration Number 3,493,705, registered  
12 August 26, 2008, for the CELLAR PRO mark for:

13  
14 Appliances for domestic use, namely, temperature controlled wine cellars; wine  
15 coolers, namely, refrigerated cabinets containing racks for wine bottles and  
16 storage shelves.

17 This registration has become incontestable.

18 9. Over 14 years, Plaintiff (and its predecessor in interest) has developed a number of  
19 proprietary products and has continuously maintained exclusive rights over the CELLAR PRO  
20 trademark. Plaintiff currently operates in every state and continuously carries on a national  
21 marketing campaign.  
22

23 10. Plaintiff has invested a very substantial sum in promoting goods and services  
24 associated with the CELLAR PRO trademark throughout the United States.

25 11. The CELLAR PRO trademark is highly distinctive and well-recognized in the  
26 industry as Planet One's mark.  
27  
28

14. The Defendants have used the WINE CELLAR PRO trademark in connection with the same products offered and sold by Plaintiff in a manner that creates a clear likelihood of confusion. In fact Defendants have sought to purchase Plaintiff's wine cellar refrigeration products for their own resale. Further, upon information and belief, each Defendant does business within states where Plaintiff also does business. There is a high likelihood that the continued use and promotion by Defendants of the WINE CELLAR PRO trademark will cause additional confusion in the marketplace as to the source of the goods sold by Plaintiff and the Defendants. The overlap in customers and the confusingly similar names and marks is strongly likely to cause confusion.

## INFRINGEMENT OF FEDERALLY REGISTERED TRADEMARK

4

1 16. Defendants' adoption and use of the infringing mark is without permission or  
2 authority from Plaintiff and has caused and is likely to cause confusion, mistake and/or intended  
3 to deceive those in the relevant market.

4  
5 17. Each Defendant has adopted and used the infringing mark in connection with wine  
6 cellar goods with actual and constructive notice of the Plaintiff's registration under 15 U.S.C.  
7 §1072.

8 18. By engaging in the complained-of conduct, the Defendants used in commerce,  
9 without the consent of Plaintiff, a copy or colorable imitation of the registered trademark and  
10 imitated the registered trademark and applied a colorable imitation of the registered trademark to  
11 its website and other tangible items intended to be used in commerce, including the Defendants'  
12 domain name winecellarprollc.com, in violation of 15 U.S.C. §1114.

14 19. The Defendants' infringing activities have caused damages to Plaintiff entitling  
15 Plaintiff to an award of damages. The infringement has been deliberate, entitling Plaintiff to  
16 punitive damages.

18 20. The Defendants' infringing activities have caused and, unless enjoined by this Court,  
19 will continue to cause, irreparable injury and damages to Plaintiff, its business, its reputation and  
20 goodwill because Plaintiff has no adequate remedy at law.

21  
22 CLAIM TWO

24 INFRINGEMENT OF COMMON LAW RIGHTS  
25 IN TRADEMARKS AND TRADE NAME

26 21. As described in this Complaint, each Defendant has infringed Plaintiff's common law  
27 rights to its trademark and trade name. Plaintiff is the senior user of the mark CELLAR PRO. A  
28 likelihood of confusion exists between Plaintiff's mark and the Defendants' mark.

1           22. The Defendants' infringement of the common law trademark and trade name has  
2 caused damages to Plaintiff entitling Plaintiff to an award of damages in an amount according to  
3 proof.

4  
5           23. The Defendants' infringing activities have caused and, unless enjoined by this Court,  
6 will continue to cause, irreparable injury and damage to Plaintiff, its business, its reputation and  
7 goodwill because Plaintiff has no adequate remedy at law.

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9  
10                                   CLAIM THREE

11                           FALSE DESIGNATION OF ORIGIN UNDER 15 U.S.C. §1125 (a)

12           24. As described in this Complaint, the Defendants' adoption and use of the infringing  
13 mark and domain name constitute a false designation of origin and/or a false and misleading  
14 description of its services and is likely to cause confusion, cause mistake and/or to deceive as to  
15 the affiliation, connection or association of Plaintiff or as to the origin, sponsorship or approval  
16 of services of Plaintiff in violation of 15 U.S.C. §1125 (a).

17  
18           25. The Defendants' infringing activities have caused damages to Plaintiff entitling  
19 Plaintiff to an award of damages. The infringement has been deliberate, entitling Plaintiff to  
20 punitive damages.

21           26. The Defendants' infringing activities have caused and, unless enjoined by this Court,  
22 will continue to cause, irreparable injury and other damages to Plaintiff, its business, its  
23 reputation and goodwill because Plaintiff has no adequate remedy at law.

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25  
26                                   CLAIM FOUR

27                           INJURY TO BUSINESS REPUTATION OR TRADEMARKS

1 27. As described in this Complaint, the Defendants have injured the business reputation  
2 of Plaintiff and diluted the distinctive quality of Plaintiff's common law trademarks.

3 28. The actions of each Defendant will constitute an injury to the business reputation of  
4 Plaintiff and dilution of Plaintiff's proprietary trademarks in violation of law.  
5

6 29. The Defendants' infringing activities have caused damages to Plaintiff entitling  
7 Plaintiff to an award of damages. The infringement has been deliberate, entitling Plaintiff to  
8 punitive damages.

9 30. The Defendants' infringing activities have caused and, unless enjoined by this Court,  
10 will continue to cause, irreparable injury and damages to Plaintiff, its business, its reputation and  
11 goodwill because Plaintiff has no adequate remedy at law.  
12

13  
14 CLAIM FIVE

15 COMMON LAW UNFAIR COMPETITION

16 31. The above actions of each Defendant are a form of unfair competition that is  
17 prohibited under the common law of the State of California. Plaintiff has been damaged by this  
18 misconduct in an amount to be determined at trial.  
19

20  
21 INJUNCTIVE RELIEF

22 32. Plaintiff seeks permanent injunctive relief pursuant to California common law, and  
23 15 U.S.C. §1116.  
24

25 33. Plaintiff has no adequate remedy at law or otherwise for the harm or damage done by  
26 Defendants because Plaintiff's business will be irreparably damaged, and such damage is difficult  
27 if not impossible to quantify. Plaintiff will suffer irreparable harm, damage, and injury unless  
28

1 the acts and conduct of the Defendants complained of above are enjoined because the  
2 Defendants' continued conduct is likely to cause confusion among customers and vendors that  
3 will result in a loss of customers, reputation, goodwill, revenue, and profits, and diminished  
4 marketing and advertising.  
5

6  
7 PRAYER FOR RELIEF

8 Plaintiff prays that after due proceedings, the Court:

- 9  
10 1. enter judgment against Defendants on all claims;  
11 2. award damages against Defendants and in favor of Plaintiff;  
12 3. award Plaintiff punitive damages;  
13 4.. enter a permanent injunction restraining each Defendant, together with their  
14 officers, employees, agents, successors and assigns or others acting in concert  
15 with them, from using the infringing trademark and domain name in connection  
16 with its business; and  
17  
18 5. grant to Plaintiff such other relief as the Court deems just and proper.  
19

20 Demand for Jury Trial

21 Plaintiff demands a jury trial.  
22

23  
24 Dated: 12/9/2022

Respectfully submitted,

25 By: /s/Thomas M. Freiburger

26 ATTORNEY FOR PLAINTIFF  
27 PLANET ONE PRODUCTS, INC.  
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